

WHELAN'S MINING AND EXPLORATION, INC.

IBLA 85-26

Decided September 19, 1985

Appeal from that part of the decision of Anchorage District Office, Bureau of Land Management, rejecting recordation filings and declaring two lode mining claims null and void and rejecting recordation filings in part and declaring two lode mining claims null and void in part. AA-42628 through AA-42630, and AA-50970.

Reversed.

1. Alaska: Alaska Native Claims Settlement Act -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Secretary of the Interior -- Withdrawals and Reservations: Effect of

Mining claims located on land closed to entry and location under the mining laws by a withdrawal order of the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act are null and void ab initio; however, where such a withdrawal order does not specifically close the land to mineral location, but only to mineral leasing, and there is no indication that mineral location was to be foreclosed, the withdrawal order will not be held to preclude mineral location.

APPEARANCES: Pat Whelan, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Whelan's Mining and Exploration, Inc., appeals from that part of a decision of the Anchorage District Office, Bureau of Land Management (BLM), dated August 21, 1984, rejecting its mining claim recordation filings for the California #2 (AA-42630) and the California #3 (AA-42629) lode mining claims and rejecting, in part, its mining claim recordation filings for the Gold Standard #2 (AA-42628) and the California #1 (AA-50970) lode mining claims. BLM declared these claims null and void ab initio or null and void ab initio in part, respectively, because they were located either entirely or partially on lands withdrawn from mineral entry.

The Gold Standard #2, the California #2 and the California #3 were located on March 10, 1981, in T. 37 S., R. 64 E., Copper River Meridian, and the location notices for these claims were submitted to BLM on April 16,

1981, in compliance with the recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982). The California #1, also situated in T. 37 S., R. 64 E., Copper River Meridian, was originally located on July 1, 1980. The amended mining claim location notice posted March 5, 1983, was submitted for recordation with BLM on April 15, 1983.

In its decision, BLM stated that the lands embraced by the claims in question were withdrawn or partially withdrawn under the authority of the Alaska Native Claims Settlement Act (ANCSA) of December 11, 1971, 43 U.S.C. § 1601 (1982). BLM set forth the following information regarding the withdrawals:

BLM Serial #	Township & Range	Conflict	Date Segregated
AA-42628*	T. 37 S., R. 64 E., 5548	PLO [Public Land Order]	November 26, 1975
through AA-42630	Copper River Meridian	AA-9205-C 1975 Reg. Selection	December 17,
AA-50970*		IC 408/409 Sealaska Corp.	May 15, 1981

\* AA-42628 and AA-50970 are rejected in part.

BLM explained that mining claims located on lands withdrawn or segregated from mineral entry are null and void ab initio, and are properly declared so when, at the time of location, the lands were not open to mineral entry. BLM held that because portions of the lands on which AA-42628 and AA-50970 were located had been closed to mineral entry under Federal law prior to the date of location, those claims were declared null and void ab initio to the extent they embraced withdrawn lands. Therefore, BLM rejected, or partially rejected, the recordation filings for these claims.

In its statement of reasons, which is accompanied by a map depicting the location of the claims, appellant asserts the following:

Please refer to the attached Land Status and Ownership map for clarification. As you can see, the Gold Standard #2 was properly staked on Federal Land which has never been withdrawn from mineral entry in any way whatsoever; portions [of] California #1 and all of California #2 were staked on land which had been set aside for possible Native selection but which land the Natives never did select and consequently was reopened to mineral entry by President Carter on Dec. 2, 1980. Portions of California #3

were improperly overstaked onto Native Lands, but these portions have never been worked and have been considered void. Proper surveys to admend [sic] this claim are being done.

Consequently, you need to revise your decision to state that the Gold Standard #2, California #1, and California #2 mining claims are in good standing, but portions of California #3 are in conflict with lands being conveyed to the Native Corp., and those portions are thereby void.

[1] It is well established that mining claims located on lands closed to entry and location under the mining laws by a withdrawal order of the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act are null and void ab initio. John Elmore, 84 IBLA 163, 164 (1984). The PLO in this case, PLO 5548, reads in pertinent part as follows:

By virtue of the authority vested in the Secretary of the Interior by section 14(h) of the Alaska Native Claims Settlement Act, 85 Stat. 688, 704, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, are hereby withdrawn from all forms of appropriation under the public land laws including leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. § 181-287 (1970), and are hereby reserved so that Goldbelt, Inc., may select from these lands under section 14(h)(3) of the Alaska Native Claims Settlement Act: [1/]

The pertinent language is "withdrawn from all forms of appropriation under the public land laws." The question is whether such language foreclosed mineral location under the mining law, since there is no specific mention of the mining law in the PLO. The general rule is that the term "public land law" does not include the mining laws. In Udall v. Tallman, 380 U.S. 1, 19 (1965), the Supreme Court stated:

[T]he term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining law," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for gas and oil.

In O. Glenn Oliver, 73 IBLA 56, 58 (1983), however, the Board interpreted segregated from "all forms of entry under the public land laws," as used in the Act of March 6, 1958, 72 Stat. 31, to include location under the mining laws. Therein, the Board stated that "the intent of Congress in using

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1/ The pertinent lands withdrawn were:

"T. 37 S., R. 64 E., U.S.S. 2927;  
Sec. 7, SW 1/4 NE 1/4, W 1/2 (fractional),  
W. 1/2 SE 1/4;  
Sec. 17, SW 1/4 NE 1/4, S 1/2 NW 1/4, SW 1/4,  
W 1/2 SE 1/4[.]"

the term 'public land laws' must be gathered from the Act itself, the legislative history of the Act or by historical interpretation of the Department concerning the Act or similar Acts." Id.

Analysis of interpretive aids in this case leads us to the conclusion that PLO 5548 did not close the described lands to location under the mining laws. The cited statutory authority for the withdrawal in PLO 5548 is section 14(h) of ANCSA, 43 U.S.C. § 1613(h) (1982). That section merely provides authority for the Secretary to withdraw and convey 2 million acres of unreserved and unappropriated public lands. Thus, the statute itself provides no guidance. However, we know that other public land orders issued by the Department under the same authority have, in fact, expressly provided that the land was being withdrawn from all forms of appropriation under the public land laws, including location under the mining laws. 2/ This is evidence that if the Department desired to include mineral locations in a withdrawal, it would do so expressly, and that in PLO 5548 it chose not to. Further support for such a result is the fact that PLO 5548, as well as the other three public land orders cited in note 2, specifically extends the withdrawal to mineral leasing. The principle of inclusio unius est exclusio alterius is applicable.

We find that PLO 5548 did not bar location of appellant's claims, since it did not withdraw the lands from mineral location, even if those claims were totally or partially within the area withdrawn by PLO 5548. 3/ The basis for BLM's decision declaring the California #2 and California #3 null and void ab initio and rejecting recordation filing for those claims and declaring the Gold Standard #2 and California #1 null and void ab initio in part and rejecting recordation filing to that extent was its determination that PLO 5548 precluded mineral location. That determination was incorrect, and we must reverse the BLM decision for that reason. 4/

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2/ Within the period of a month in 1975 the Department issued four public land orders (PLO 5548; PLO 5549, 40 FR 55351 (Nov. 28, 1975); PLO 5554, 40 FR 58145 (Dec. 15, 1975); PLO 5567, 40 FR 59348 (Dec. 23, 1975)), withdrawing lands in Alaska pursuant to the authority of section 14(h) of ANCSA. Only one of those, PLO 5554, specifically extended the withdrawal to include location under the mining laws.

3/ The notation rule did not preclude location either, since the official records of BLM carried only the notation that the lands were withdrawn under PLO 5548.

4/ We need not address the arguments raised by appellant given our disposition of this case. We note, however, that appellant has referred to Dec. 2, 1980, as the date the lands were reopened to mineral entry. This statement is apparently a reference to the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3101 (1982), enacted on Dec. 2, 1980. The only specific reference in that act to revocation of any public land orders is in section 1322, 16 U.S.C. § 3209 (1982). PLO 5548 is not mentioned therein. Also the map provided by appellant on appeal indicates that the California #3 claim lies partially within lands in sec. 17, T. 37 S., R. 64 E., the subsurface estate of which was conveyed to Sealaska Corporation by Interim Conveyance 409, dated May 15, 1981. Appellant indicates that it is abandoning any claim to that portion of the California #3 which is located on lands conveyed to a Native corporation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Bruce R. Harris  
Administrative Judge

We concur:

R. W. Mullen  
Administrative Judge

Gail M. Frazier  
Administrative Judge

88 IBLA 340

